IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

Crl.MC.No. 391 of 2007()

CRRP.14/2002 of ADDL. SESSIONS COURT (ADHOC)-II, PALAKKAD
MC.24/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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PETITIONER: RESPONDENT/ACCUSED

SATHYAKRISHNAN, S/O.DAKSHAYANI,
VALUMBILIMANGALAM, SREEKRISHNAPURAM,
OTTAPPALAM, PALAKKAD.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.RAVI K. (PARIYARATH)

RESPONDENTS: PETITIONER AND STATE

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1. SUMATHI, D/O.LATE VELAYUDHAN,
13/398, NEW COLONY, KOPPAM AMSOM, PALAKKAD.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 391 OF 2007

Dated this the 1st day of June, 2007

ORDER

The petitioner has suffered an order under Sec.125 of the Cr.P.C. which directs him to pay maintenance at the rate of Rs.500/- p.m. each to his wife and child. Marriage is admitted. Separate residence is also not disputed. The petitioner contends that there was no valid reason to justify separate residence.

2. Parties went to trial on these contentions. Before the learned Magistrate there was only oath against oath. The learned Magistrate took the view that the claimant/wife is good looking; that the petitioner/husband has some disability and is not as good looking. The learned Magistrate assumed that that was the reason for the strain in the relationship and separate residence of the parties. The learned Magistrate accordingly turned down the claim for maintenance of the wife

and granted maintenance only for the child.

3. The claimant went in revision. The revisional court found that the reason urged by the trial court is totally unsatisfactory. Such a plea had not been raised even by the petitioner, it was noted. The claimant had contended that the cruelty meted out to her by the petitioner's mother and the submission without demur made by the petitioner to such conduct are the reasons justifying her separate residence. The mother-in-law was not examined by the petitioner. The learned Sessions Judge, in these circumstances, came to the conclusion that the wife is entitled for maintenance.

4. The quantum was fixed for both the claimants at the rate of Rs.500/- per mensem. The petitioner is admittedly a hotel employee. The 1st claimant/wife has also a temporary employment as sweeper/helper in a Pre-primary school. That fact was not disputed. The courts found that Rs.500/- per mensem can be awarded as maintenance. The petitioner assails that finding also.

5. On the point of cruelty, I do not find much of contest. In fact the suggestion to the claimant in the course of cross-examination itself is that she was residing away from the

matrimonial home as per the agreement in settlement. In these circumstances, the contention that separate residence is unjustified, cannot obviously be accepted. Moreover, there is an allegation raised by the claimant that the mother-in-law's cruelty was deterring her from sharing the same roof with the petitioner. That assertion had not been effectively challenged or contested. The learned Magistrate was absolutely correct in taking note of the assertion on oath made by P.W.1 which stood without any effective and worthwhile challenge.

6. About the quantum of maintenance awarded and the entitlement of the 1st claimant/wife, we have indications to show that the lady is temporarily employed. The learned Sessions Judge took note of the dictum in **Rajathi v. Ganesan (**AIR 1999 SC 2374). Even the fact that the wife, to keep her body and soul together, has engagement herself in some pursuits is no reason for the court to turn down the claim for maintenance of such destitute wife, it was held. There is no material about the quantum of income derived by the claimant. The claimant asserted that she was not having means. That her meager employment was not sufficient means is the obvious suggestion. There is not even a suggestion made in cross-examination about

the quantum of income which the lady makes. Curiously the petitioner, who had asserted that the claimant was getting Rs.2,000/- per month, significantly made a categoric assertion even in the chief-examination that he does not know the income of the petitioner. In any view of the matter, I am satisfied that the impugned order does not at all warrant any interference by invoking the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. which jurisdiction is to be invoked and exercised sparingly in exceptional cases that too only to prevent the miscarriage/failure of justice and abuse of the process of the court.

7. I am unable to invent any such vice in the impugned order. The challenge must hence fail. This Crl.M.C. is, in these circumstances, dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge